RECENT CASES.

BAILMENTS — BAILEE AND THIRD PERSONS — MEASURE OF DAMAGES IN ACTIONS FOR INJURY TO BAILED CHATTELS. — The plaintiff hired a horse from a livery stable. The defendant negligently caused the death of the horse. *Held*, that the plaintiff may recover the full value of the horse. *Compton* v. *Allward*, 48 Can. L. J. 109 (Maintoba, K. B.). See NOTES, p. 655.

BAILMENTS — BAILOR AND BAILEE — DUTY OF ONE LETTING CARRIAGES TO INSPECT. — The plaintiff was injured by the breaking of the axle of a buggy hired from the defendant for a drive. The defect could have been known by the exercise of proper care by the defendant. *Held*, that the defendant is liable for the injury to the plaintiff. *Denver Omnibus & Cab Co.* v. *Madigan*, 120 Pac. 1044 (Colo., Ct. App.).

A coach owner is liable to passengers for accidents caused by his failure to inspect the coach. *Bremner* v. *Williams*, 1 C. & P. 414. See *Ingalls* v. *Bills*, 50 Mass. 1, 15. There is also some authority that one who lets vehicles incurs a similar liability to hirers. See *Hadley* v. *Cross*, 34 Vt. 586, 588; *Hyman* v. *Nye*, 6 Q. B. D. 685, 687. But the duty of a coach owner or other common carrier to a passenger differs from the duty of a letter to a hirer, since the performance of the carrier's duty is a matter of public concern. *Railroad Co.* v. *Lockwood*, 17 Wall. (U. S.) 357. See *Davis* v. *Chicago, etc. Ry. Co.*, 93 Wis. 470, 483, 67 N. W. 16, 20. It would seem, therefore, that the liability of the letter of carriages depends not on the law of carriers but on that of bailments for hire. It has been held in England that a bailor warrants that the property hired is reasonably fit for the bailee's purposes. *Jones* v. *Page*, 15 L. T. N. S. 619; *Vogan* v. *Oulton*, 79 L. T. N. S. 384. American courts have held, however, that the principle of *caveat emptor* applies, and that, accordingly, recovery, if allowed, must be based on negligence. *Horne* v. *Meakin*, 115 Mass. 326; *Glenn* v. *Winters*, 17 N. Y. Misc. 597, 40 N. Y. Supp. 659. Such negligence is held to consist in exposing hirers of property to danger by reason of defects therein of which the owner ought to know. *Connors* v. *Great Northern Elevator Co.*, 90 N. Y. App. Div. 311, 85 N. Y. Supp. 644. *Cf. Elliott* v. *Hall*, 15 Q. B. D. 315.

BILLS AND NOTES — CHECKS — CHECK CONSTRUED AS ASSIGNMENT OF FUND. — The plaintiff sued as executor to recover the amount of a check drawn by his testator on the defendant bank. The check was presented before the testator's death but was paid after notice of the event. *Held*, that the plaintiff cannot recover. *Wasgatt* v. *First National Bank*, 134 N. W. 224 (Minn.).

The principal case adopts the view that a check is an assignment *pro tanto* of the funds of the drawer. See 2 DANIEL, NEGOTIABLE INSTRUMENTS, 5 ed., § 1638. While this was formerly the rule in Illinois, Nebraska, Iowa, and Kentucky, the Negotiable Instruments Law has changed it. See BRANNAN, NEGOTIABLE INSTRUMENTS LAW, § 189. But it is still law in South Carolina. *Fogarties* v. *President, etc. of State Bank*, 12 Rich. L. (S. C.) 518; *Simmons* v. *Bank of Greenwood*, 41 S. C. 177, 19 S. E. 502. Strictly the depositor has no money in the bank but simply a debt against the bank for the amount of the

v. Armstrong, 4 Minn. 335. And so incest. State *v.* Chambers, 87 Ia. 1, 53 N. W. 1090. *Contra*, State *v.* Burt, 17 S. D. 7, 94 N. W. 409. And so perhaps where wife is wrongfully deprived of dower rights. See Hach *v.* Rollins, 158 Mo. 182, 190, 59 S. W. 232, 234. But bigamy has been held not a crime against the other. Bassett *v.* United States, 137 U. S. 496, 11 Sup. Ct. 165; People *v.* Quanstrom, 93 Mich. 254, 53 N. W. 165.

deposit. *O'Connor* v. *Mechanics' Bank*, 124 N. Y. 324, 26 N. E. 816. See *Florence Mining Co.* v. *Brown*, 124 U. S. 385, 391, 8 Sup. Ct. 531, 534. The universal power to stop payment on a check shows that it is not even an assignment of the debt. See 17 HARV. L. REV. 104, 113–114. The result of the principal case might be reached on the ground that death does not revoke the bank's power to pay. See 14 HARV. L. REV. 588. *Contra, Pullen* v. *Placer County Bank*, 138 Cal. 169, 71 Pac. 83; *Weiand's Admr.* v. *State National Bank*, 112 Ky. 310, 65 S. W. 617. If the bank pays without notice, it will be protected. See *Brennan* v. *Merchants' National Bank*, 62 Mich. 343, 346, 28 N. W. 881, 882; 17 HARV. L. REV. 104, 117. If the common-law rule as to revocation of agency by death is thus abandoned, it would seem consistent to hold that, even if known, death has no effect on an outstanding order. See MORSE, BANKS AND BANKING, 4 ed., § 400. The Negotiable Instruments Law, though silent on this point, provides that a check is a bill of exchange. See BRANNAN, NEGOTIABLE INSTRUMENTS LAW, § 185. And the drawer's death does not revoke the power to accept a bill of exchange. *Billing* v. *Devaux*, 3 M. & G. 565. See *Cutts* v. *Perkins*, 12 Mass. 205, 210.

CONFLICT OF LAWS — RECOGNITION OF FOREIGN JUDGMENTS — EFFECT AT SITUS OF LAND OF FOREIGN DECREE FOR CONVEYANCE OF LAND AS ALIMONY. — The plaintiff, a citizen of New York, married the defendant, a citizen of Switzerland, in France. The plaintiff conveyed in fee to the defendant a one half interest in real property, situated in New York. The plaintiff then secured a divorce in Switzerland, whose law required a divorced husband to reconvey all property which his former wife had transferred to him during the existence of the marriage. The plaintiff in New York asked for a decree for reconveyance. *Held*, that the plaintiff has no right to the relief prayed. *De Graffenried* v. *De Graffenried*, 132 N. Y. Supp. 1107 (App. Div.). See NOTES, p. 653.

CONFLICT OF LAWS — SITUS OF CHOSES IN ACTION — JURISDICTION IN REM. — A debtor, garnished in Illinois, pleaded a prior assignment by the principal defendant. The assignee, who, it would seem, was not in Illinois, was made a party and properly served according to Illinois law. The assignee did not appear, and the debtor-garnishee paid. The assignee later sued him in Iowa. *Held*, that the Illinois judgment is a bar. *Steltzer* v. *Chicago, M. & St. P. Ry. Co.* 134 N. W. 573 (Ia.). See NOTES, p. 651.

CONSTITUTIONAL LAW — EX POST FACTO AND RETROACTIVE LAWS — STATUTE ADMITTING EVIDENCE AGAINST ACCUSED. — A statute provided that no evidence or pleading of a party obtained from him by judicial proceeding should be used against him in any criminal case. The statute was repealed after the commission of a forgery for which the defendant was indicted, but before trial. The forged writing had been incorporated by the defendant into his pleadings in a civil case. *Held*, that the writing is not admissible in evidence against him. *Frisby* v. *United States*, 44 Chic. Leg. N. 227 (D. C., Ct. App., Jan. 2, 1912).

A statute giving certain evidence the effect of a presumption cannot operate retrospectively in criminal cases. *State* v. *Cincinnati Tin & Japan Co.*, 66 Oh. St. 182, 64 N. E. 68; *State* v. *Bond*, 4 Jones (N. C.) 9. *A fortiori*, if the presumption is conclusive. *United States* v. *Hughes*, Fed. Cas., No. 15,416; *Kring* v. *Missouri*, 107 U. S. 221, 2 Sup. Ct. 443. These are really changes in substantive law. See THAYER, PRELIMINARY TREATISE ON EVIDENCE, chap. viii. Changes in procedure destroying substantial rights of the accused are *ex post facto* laws. *State* v. *Baker*, 50 La. Ann. 1247, 24 So. 240. See *Calder* v. *Bull*, 3 Dall. (U. S.) 386, 390; *Hallock* v. *United States*, 185 Fed. 417, 422. Thus, a statute allowing conviction upon evidence previously